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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

THOMAS A. PAYNE,
Petitioner,

No. C 11-00960 CRB

ORDER TO SHOW CAUSE

v.

KELLY HARRINGTON,
Respondent.

Petitioner, who is in the custody of the California Department of Corrections, has filed a petition for a writ of habeas corpus, pursuant to 28 U.S.C. section 2254. Petitioner was convicted in Marin County of possession of a firearm by a felon and possession of ammunition by a felon.

This Court may entertain a petition for a writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a); Rose v. Hodges, 423 U.S. 19, 21 (1975).

A district court shall “award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243. Summary dismissal is appropriate only where the allegations in the petition are vague or conclusory, palpably

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For the Northern District of California

1 incredible, or patently frivolous or false. Hendricks v. Vasquez, 908 F.2d 490, 491 (9th Cir.
2 1990) (quoting Blackledge v. Allison, 431 U.S. 63, 75-76 (1977)).

3 The Court has reviewed the petition and finds good cause to proceed. Accordingly,

- 4 1. The Clerk of the Court shall serve by certified mail a copy of this Order
5 and the petition and all attachments thereto upon the Respondents and
6 the Respondents' counsel, the Attorney General of the State of
7 California. The Clerk shall also serve a copy of this Order on the
8 Petitioner's counsel.
- 9 2. Respondents shall file with this Court and serve upon the Petitioner,
10 within sixty (60) days of the issuance of this Order, an answer
11 conforming in all respects to Rule 5 of the Rules Governing Section
12 2254 Cases, showing cause why a writ of habeas corpus should not be
13 issued. Respondent shall file with the answer a copy of all portions of
14 the state trial and appellate record that have been transcribed previously
15 and that are relevant to a determination of the issues presented by the
16 petition.
- 17 3. If the Petitioner wishes to respond to the answer, he shall do so by filing
18 a traverse with the court and serving it upon the Respondents within
19 thirty (30) days of his receipt of the answer.

20 **IT IS SO ORDERED.**

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23 Dated: March 16, 2011



CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE